

deliberate will of the contracting parties ; and it is admitted, that this mortgage has all the common law requisites of a binding deed. But the legislative enactments here, which require deeds to be recorded, like those of England requiring enrollment, are universally admitted to have been intended to preserve the evidence of the contract ; and to prevent the practice of fraud upon creditors and purchasers. The object was to furnish the means of notice and a protection to innocent third persons, not parties to the contract. It never has been held, that those laws altered any principle of the common law, or required any thing, in addition to the common law solemnities as a necessary constituent of a deed to secure the payment of money, as between the parties to it. Hence, a deed of this kind, as between the parties themselves, has always been deemed as valid and effectual without recording as with it. And as to creditors and purchasers, if they have, by any other means, obtained that notice, which it was the design of recording to give, even they are not allowed to object to the validity and operation of the deed on that account. But, in no instance, has any of the immediate parties to such a deed ever been suffered to object, that it should not be enforced ; because it had not been recorded in time ; such an objection can only come from a creditor, a purchaser, or some innocent third person whose interests are affected by the deed. Here there is no such third person before the court ; the objection is made by some of the parties to the mortgage itself ; which cannot be permitted ; since as to them the deed is valid by the common law ; and in no way affected, as a security for money, by the acts of Assembly requiring such instruments to be recorded. There is then, nothing in this position taken against the validity of the mortgage. (o)

It appears that *Charles Salmon* had agreed to lend his credit to *Thomas Clagett*, by selling him goods to be paid for at some future day ; by lending him money ; and by becoming his surety, in the way of lending or endorsing notes. Hence, in respect to that agreement, they stand towards each other simply as creditor and debtor. But, for the purpose of securing *Salmon* against any loss he might sustain by the credit so given ; *Thomas Clagett* with *Elizabeth Clagett* and others mortgaged their property to *Salmon*;

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(o) 2 Inst. 674; *Northcott v. Underhill*, 1 Ld. Raym. 388; S. C. 1 Salk. 199; Bac. Abr. tit. Bargain and Sale, E. 1; *Bushell v. Bushell*, 1 Scho. & Lef. 98; *Wood v. Owings*, 1 Cran. 240; *Hamilton v. Russell*, 1 Cran. 315; *Dorsey v. Smithson*, 6 H. & J. 61; *Hudson v. Warner*, 2 H. & G. 415.